

ASSEMBLY BILL

No. 313

Introduced by Assembly Member Gray

February 6, 2017

An act to add Article 2.5 (commencing with Section 11375) to Chapter 4 of Part 1 of Division 3 of Title 2 of the Government Code, and to amend, repeal, and add Sections 174, 175, 275, 1055, 1525, and 1552 of, to add Section 123.5 to, to add Article 5 (commencing with Section 191) to Chapter 2 of Division 1 of, to add Article 6 (commencing with Section 1110) to Chapter 3 of Part 1 of Division 2 of, to add Article 4 (commencing with Section 1130) to Chapter 4 of Part 1 of Division 2 of, and to repeal Chapter 3 (commencing with Section 1075) and Chapter 4 (commencing with Section 1120) of Part 1 of Division 2 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 313, as introduced, Gray. Water.

(1) Existing law establishes the State Water Resources Control Board in the California Environmental Protection Agency consisting of 5 members appointed by the Governor, including one member required to be an attorney admitted to practice law in this state who is qualified in the fields of water supply and water rights and one registered civil engineer under the laws of this state qualified in the fields of water supply and water rights.

This bill would revise the qualifications for the membership to the board by eliminating those requirements for qualification in the field of water rights.

(2) Under existing law, the State Water Resources Control Board administers a water rights program pursuant to which the board grants

permits and licenses to appropriate water. Existing law requires a person who holds a permit or license to appropriate water, leases water pursuant to specified provisions of law, or files a specified application, registration, petition, or request relating to water use to pay fees imposed by the board. The board is required to adopt a fee schedule so that the total amount of fees collected equals that amount necessary to recover costs incurred in connection with the issuance, administration, review, monitoring, and enforcement of permits, licenses, certificates, and registrations to appropriate water, water leases, and orders approving changes in points of discharge, place of use, or purpose of use of treated wastewater. The board is required to set the amount of total revenue collected each year through the fees at an amount equal to the amount appropriated by the Legislature from the Water Rights Fund in the annual Budget Act for this activity. The revenue generated by those fees is required to be deposited in the Water Rights Fund.

This bill would transfer authority over water rights matters from the board to the Department of Water Resources, as specified. The bill would require the department to base the above-described fee schedule solely upon a ratable share of the average total actual diversion of water as reported by each water right holder in the 2 years prior. The bill would require the department to set the amount of total revenue collected each year through these fees at an amount equal to 50% of the amount appropriated by the Legislature for expenditure for support of water rights fund program activities from the Water Rights Fund.

(3) Existing law requires the Department of Water Resources and the State Water Resources Control Board to take all appropriate proceedings or actions to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in this state.

This bill would eliminate this duty for the board.

(4) Existing law declares that the diversion or use of water other than as authorized by specified provisions of law is a trespass. Existing law authorizes the executive director of the State Water Resources Control Board to issue a complaint to a person who violates certain use and diversion of water provisions and subjects the violator to administrative civil liability. Existing law authorizes the board to adopt an order setting administrative civil liability based on the allegations set forth in the complaint without a hearing, unless a written request for a hearing signed by, or on behalf of, the party served with the complaint is

delivered to or received by mail by the board within 20 days after receipt of the complaint.

This bill would establish a Water Rights Division within the Office of Administrative Hearings, as prescribed. The bill would authorize the Director of Water Resources rather than the executive director of the board to issue the complaint to a person who violates these use and diversion of water provisions and would require a hearing to set the above-described administrative civil liability to be held before the division in accordance with the Administrative Procedure Act. The bill would deem a decision made by an administrative law judge in the division to be a recommendation and not final until accepted by the director, as prescribed. The bill would authorize an appeal of the director's decision on the recommendation or of the adoption of the recommendation due to the failure to act to a superior court. The bill would add expenditures of the division to the purposes for which the moneys in the Water Rights Fund are available for expenditure, upon appropriation by the Legislature.

(5) Under existing law the Department of Water Resources operates the State Water Resources Development System, known as the State Water Project, in accordance with the California Water Resources Development Bond Act to supply water to persons and entities in the state. Under existing law, the State Water Project is comprised of the State Water Facilities, as defined in the bond act, and additions determined by the department to be necessary and desirable.

This bill would establish within the Natural Resources Agency the State Water Project Commission, consisting of 9 members appointed by the Governor and subject to confirmation by the Senate. The bill would transfer authority over and relating to the State Water Project from the department to the commission, as specified.

(6) Existing law, the Sustainable Groundwater Management Act, requires all groundwater basins designated as high- or medium-priority basins by the Department of Water Resources that are designated as basins subject to critical conditions of overdraft to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans by January 31, 2020, and requires all other groundwater basins designated as high- or medium-priority basins to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans by January 31, 2022, except as specified. The act authorizes the State Water Resources Control Board to designate a high- or medium-priority basin as a probationary basin

if the state board makes a certain determination and to develop an interim plan for the probationary basin.

This bill would transfer the board's authority relating to the act to the department.

(7) The provisions of this bill would become operative on July 1, 2018.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 2.5 (commencing with Section 11375) is
2 added to Chapter 4 of Part 1 of Division 3 of Title 2 of the
3 Government Code, to read:

4
5 Article 2.5. Water Rights Division
6

7 11375. (a) There is within the Office of Administrative
8 Hearings a Water Rights Division, consisting of no fewer than
9 four full-time administrative law judges. An administrative law
10 judge of the division shall have the same qualifications as other
11 administrative law judges and have no less than eight years
12 experience as an attorney dealing with water rights matters.

13 (b) The director shall select an administrative law judge as the
14 supervisor of the division. The director and the supervisor shall
15 assign at least three other administrative law judges to the division.
16 The supervisor shall supervise the administrative law judges'
17 training and coordinate the publication of the division's decisions.
18 The division shall include only those administrative law judges
19 specifically qualified and shall at no time constitute more than 25
20 percent of the total number of administrative law judges within
21 the Office of Administrative Hearings. If the members of the
22 division do not have a full water rights-related case workload, they
23 may be assigned other work by the director. When the water
24 rights-related case workload exceeds the capacity of the members
25 of the division, the supervisor shall request the director to assign
26 additional judges as appropriate. When this workload overflow
27 occurs on a temporary basis, the director shall supply judges from
28 the office to adjudicate the cases.

1 (c) The administrative law judges of the division shall have
2 experts available. The director, with the advice of the supervisor,
3 shall appoint experts. The administrative law judges of the division
4 may call on these experts to testify on the record about any matter
5 relevant to a proceeding and these experts shall be subject to
6 cross-examination by all parties. The administrative law judge
7 may award reasonable expert witness fees to any person serving
8 as an expert, which shall be paid from the Water Rights Fund upon
9 appropriation by the Legislature.

10 (d) Section 11430.30 does not apply in a proceeding under this
11 section.

12 11375.5. An administrative law judge shall conduct an
13 adjudicative hearing relating to water rights pursuant to the
14 Administrative Procedure Act.

15 11376. The office shall provide facilities and support personnel
16 for the division.

17 11376.5. A decision made by an administrative law judge in
18 the division shall be deemed a recommendation and is not final
19 until accepted by the Director of Water Resources. The Director
20 of Water Resources may review materials from the hearing record,
21 as necessary, and has the authority to accept, modify, or reject the
22 recommendation. The Director of Water Resources shall make a
23 final decision accepting, modifying, or rejecting the division's
24 recommendation within 30 days of the issuance of that
25 recommendation. If the Director of Water Resources does not act
26 on a recommendation within 30 days, the recommendation shall
27 be deemed adopted. The Director of Water Resource's decision
28 on the recommendation, or the adoption of the recommendation
29 due to the failure to act, is a final agency action that may be
30 appealed to a superior court of the State of California.

31 11377. This article shall become operative on July 1, 2018.

32 SEC. 2. Section 123.5 is added to the Water Code, to read:

33 123.5. (a) The department succeeds to and is vested with all
34 of the authority, duties, powers, purposes, functions,
35 responsibilities, and jurisdiction of the board and its predecessors
36 for purposes of all of the following:

37 (1) Water rights authority provided in Chapter 1 (commencing
38 with Section 1000), Chapter 1.5 (commencing with Section 1020),
39 and Chapter 2 (commencing with Section 1050) of Part 1, Part 2
40 (commencing with Section 1200), Part 3 (commencing with Section

1 2000), and Part 5 (commencing with Section 4999), of Division
2 2.

3 (2) The Sustainable Groundwater Management Act (Part 2.74
4 (commencing with Section 10720) of Division 6), Section 1529.5,
5 and Article 6 (commencing with Section 65350) of Chapter 3 of
6 Division 1 of Title 7 of the Government Code.

7 (3) Section 348, and Part 5.1 (commencing with Section 5100)
8 and Part 5.2 (commencing with Section 5200) of Division 2.

9 (4) Part 2 (commencing with Section 10500) of Division 6.

10 (b) The department shall maintain authority over California's
11 water rights matters and carry out the duties, responsibilities, and
12 functions described in this section. A statutory reference to "board"
13 or "state board" regarding a function transferred to the department
14 shall refer to the department.

15 (c) Regulations adopted, orders issued, and all other actions
16 taken by the board or its predecessors pursuant to the authorities
17 vested in the department and in effect immediately preceding the
18 operative date of this section shall remain in effect and are fully
19 enforceable until they expire by their own terms unless readopted,
20 amended, or repealed. Regulations in the process of adoption
21 pursuant to the authorities vested in the department shall continue
22 under the authority of the department unless the department
23 determines otherwise. Any other action adopted, prescribed, taken,
24 or performed by, or on behalf of, the board in the administration
25 or performance of a duty, responsibility, or authorization
26 transferred to the department shall remain in effect and shall be
27 deemed to be an action of the department unless the department
28 determines otherwise.

29 (d) Permits, licenses, and other formal approvals and
30 authorizations issued by the board or any of its predecessors
31 pursuant to authorities vested in the department pursuant to this
32 section are not affected by the transfer and remain in effect, in
33 accordance with all applicable laws and regulations, unless
34 renewed, reissued, revised, amended, suspended, or revoked by
35 the department.

36 (e) Any decision or order by the board pursuant to authorities
37 vested in the department pursuant to this section remains in effect,
38 in accordance with all applicable laws and regulations, and the
39 department shall implement the decision or order and treat it as

1 administrative precedent unless it is renewed, reissued, revised,
2 amended, suspended, or revoked by the department.

3 (f) Any action or proceeding by or against the board, including
4 any officer or employee of the board named in an official capacity,
5 or any of its predecessors, pertaining to matters vested in the
6 department by this section shall not abate, but shall continue in
7 the name of the department. The department shall be substituted
8 for the board, including any officer or employee of the board named
9 in an official capacity, and any of its predecessors, by the court or
10 agency where the action or proceeding is pending. The substitution
11 shall not in any way affect the rights of the parties to the action or
12 proceeding.

13 (g) On and after July 1, 2018 the unexpended balance of all
14 funds available for use by the board or any of its predecessors in
15 carrying out any functions transferred to the department are
16 available for use by the department.

17 (h) The board shall transfer to the department books, documents,
18 data, records, and property of the board pertaining to functions
19 transferred to the department.

20 (i) A contract, lease, license, or any other agreement to which
21 the board or any of its predecessors is a party is not void or
22 voidable by reason of this section, but shall continue in full force
23 and effect, with the department assuming all of the rights,
24 obligations, liabilities, and duties of the board and any of its
25 predecessors as it relates to the duties, powers, purposes,
26 responsibilities, and jurisdiction vested in the department pursuant
27 to this section. This assumption does not affect the rights of the
28 parties to the contract, lease, license, or agreement.

29 (j) This section shall become operative on July 1, 2018.

30 SEC. 3. Section 174 of the Water Code is amended to read:

31 174. (a) The Legislature hereby finds and declares that in order
32 to provide for the orderly and efficient administration of the water
33 resources of the state, it is necessary to establish a control board
34 that shall exercise the adjudicatory and regulatory functions of the
35 state in the field of water resources.

36 (b) It is also the intention of the Legislature to combine the
37 water rights, water quality, and drinking water functions of the
38 state government to provide for coordinated consideration of water
39 rights, water quality, and safe and reliable drinking water.

40 (c) This section shall become operative on July 1, 2014.

1 (d) *This section shall become inoperative on July 1, 2018, and,*
2 *as of January 1, 2019, is repealed.*

3 SEC. 4. Section 174 is added to the Water Code, to read:

4 174. (a) The Legislature hereby finds and declares that in order
5 to provide for orderly and efficient administration of the water
6 resources of the state it is the intention of the Legislature to
7 combine the water quality and drinking water functions of the state
8 government to provide for coordinated consideration of water
9 quality, and safe and reliable drinking water.

10 (b) This section shall become operative on July 1, 2018.

11 SEC. 5. Section 175 of the Water Code is amended to read:

12 175. (a) There is in the California Environmental Protection
13 Agency the State Water Resources Control Board consisting of
14 five members appointed by the Governor. One of the members
15 appointed shall be an attorney admitted to practice law in this state
16 who is qualified in the fields of water supply and water rights, one
17 shall be a registered civil engineer under the laws of this state who
18 is qualified in the fields of water supply and water rights, one shall
19 be a registered professional engineer under the laws of this state
20 who is experienced in sanitary engineering and who is qualified
21 in the field of water quality, and one shall be qualified in the field
22 of water quality. One of the above-appointed persons, in addition
23 to having the specified qualifications, shall be qualified in the field
24 of water supply and water quality relating to irrigated agriculture.
25 One member shall not be required to have specialized experience.

26 (b) Each member shall represent the state at large and not any
27 particular portion thereof and shall serve full time. The board shall,
28 to the extent possible, be composed of members from different
29 regions of the state. The appointments made by the Governor shall
30 be subject to confirmation by the Senate in accordance with Article
31 2 (commencing with Section 1770) of Chapter 4 of Division 4 of
32 Title 1 of the Government Code.

33 (c) *This section shall become inoperative on July 1, 2018, and,*
34 *as of January 1, 2019, is repealed.*

35 SEC. 6. Section 175 is added to the Water Code, to read:

36 175. (a) There is in the California Environmental Protection
37 Agency the State Water Resources Control Board consisting of
38 five members appointed by the Governor. One of the members
39 appointed shall be an attorney admitted to practice law in this state
40 who is qualified in the field of water supply, one shall be a

1 registered civil engineer under the laws of this state who is
2 qualified in the field of water supply, one shall be a registered
3 professional engineer under the laws of this state who is
4 experienced in sanitary engineering and who is qualified in the
5 field of water quality, and one shall be qualified in the field of
6 water quality. One of the above-appointed persons, in addition to
7 having the specified qualifications, shall be qualified in the field
8 of water supply and water quality relating to irrigated agriculture.
9 One member shall not be required to have specialized experience.

10 (b) Each member shall represent the state at large and not any
11 particular portion thereof and shall serve full time. The board shall,
12 to the extent possible, be composed of members from different
13 regions of the state. The appointments made by the Governor shall
14 be subject to confirmation by the Senate in accordance with Article
15 2 (commencing with Section 1770) of Chapter 4 of Division 4 of
16 Title 1 of the Government Code.

17 (c) This section shall become operative on July 1, 2018.

18 SEC. 7. Article 5 (commencing with Section 191) is added to
19 Chapter 2 of Division 1 of the Water Code, to read:

20
21 Article 5. State Water Project Commission
22

23 191. (a) The State Water Project Commission is hereby
24 established within the Natural Resources Agency.

25 (b) The commission shall consist of nine members. Each
26 member shall represent the state at large and not any particular
27 portion of the state. To the extent possible, the commission shall
28 be composed of members from different regions of the state. The
29 members of the commission shall be appointed by the Governor
30 and subject to confirmation by the Senate, as follows:

31 (1) Three members shall be registered engineers with experience
32 in civil or hydrological engineering.

33 (2) Three members shall be attorneys admitted to practice in
34 California and qualified in the fields of water rights, water
35 conveyance, or water storage.

36 (3) Three shall be public members, one representing each of the
37 following:

38 (A) Agricultural interests.

39 (B) The environment.

40 (C) Municipal water users.

(c) Refusal by or failure of the Senate to confirm an appointment to the commission shall create a vacancy in the office to which the appointment was made. Any vacancy shall be immediately filled by the Governor, subject to confirmation by the Senate, for the unexpired portion of the term in which the vacancy occurs.

(d) (1) The Governor shall determine the expiration of each member's term at the time of appointment in accordance with the following:

(A) The initial term of one of the members of the commission shall expire on January 15, 2019.

(B) The initial term of two of the members of the commission shall expire on January 15, 2020.

(C) The initial term of two of the members of the commission shall expire on January 15, 2021.

(D) The initial term of two of the members of the commission shall expire on January 15, 2022.

(E) The initial term of two of the members of the commission shall expire on January 15, 2023.

(2) Upon the expiration of each term described in paragraph (1), the term of each succeeding member shall be four years.

(e) The Legislature may remove a member of the commission from office for dereliction of duty, corruption, or incompetency by concurrent resolution adopted by a majority vote of the membership in each house of the Legislature.

192. (a) The headquarters of the commission shall be in Sacramento.

(b) The commission shall determine the times and places for its meetings.

(c) All meetings of the commission shall be conducted in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(d) The members of the commission shall select a chairperson from among their members, who shall serve as chairperson at the pleasure of the members of the commission.

(e) (1) Notwithstanding Section 11009 of the Government Code, a member of the commission shall receive one hundred dollars (\$100) for each day of actual service performed in carrying out the member's duties. The amount of compensation shall not

1 exceed the sum of five hundred dollars (\$500) per member for any
2 calendar month.

3 (2) In addition to the compensation provided in paragraph (1),
4 a member of the commission shall receive his or her actual and
5 necessary expenses incurred in the performance of the member's
6 duties.

7 (3) Compensation and expenses provided in this subdivision
8 shall be paid from the rates, charges, and revenues assessed for
9 the State Water Project.

10 193. (a) The commission may employ an executive officer
11 who shall serve at the pleasure of the commission.

12 (b) The executive officer shall hire employees necessary to carry
13 out commission functions.

14 (c) The executive officer may purchase or rent necessary
15 supplies, instruments, tools, equipment, and conveniences.

16 (d) The department shall furnish to the commission, at its
17 request, assistance, including, but not limited to, legal and clerical
18 services, as may be required.

19 194. (a) The commission succeeds to and is vested with all of
20 the authority, duties, powers, purposes, functions, responsibilities,
21 and jurisdiction of the department, its predecessors, and its director
22 for purposes of all of the following:

23 (1) Chapter 8 (commencing with Section 12930) of Part 6 of
24 Division 6.

25 (2) Chapter 3 (commencing with Section 11419), Chapter 10
26 (commencing with Section 11900), and Article 3 (commencing
27 with Section 11970) of Chapter 11 of Part 3 of Division 6.

28 (3) Section 138.10.

29 (4) Part 2 (commencing with Section 10500) of Division 6.

30 (5) Section 11260.

31 (6) Section 147.5.

32 (b) The commission shall administer the State Water Project,
33 have full charge and control of the construction, operation, and
34 maintenance of the State Water Project, and shall set all rates,
35 charges, and revenues associated with the State Water Project. The
36 commission shall carry out the duties, responsibilities, and
37 functions described in this section. Statutory reference to
38 "department" or "director" regarding a function transferred to the
39 commission shall refer to the commission.

1 (c) Regulations adopted, orders issued, and all other
2 administrative actions taken by the department, any of its
3 predecessors, or its director, pursuant to the authorities vested in
4 the commission and in effect immediately preceding the operative
5 date of this section shall remain in effect and are fully enforceable
6 until they expire by their own terms, unless readopted, amended,
7 or repealed Regulations in the process of adoption pursuant to the
8 authorities vested in the commission shall continue under the
9 authority of the commission unless the commission determines
10 otherwise. Any other administrative action adopted, prescribed,
11 taken, or performed by, or on behalf of, the department, or its
12 director, in the administration of a program or the performance of
13 a duty, responsibility, or authorization transferred to the
14 commission shall remain in effect and shall be deemed to be an
15 action of the commission unless the commission determines
16 otherwise.

17 (d) Permits, licenses, accreditations, certificates, and other
18 formal approvals and authorizations issued by the department or
19 its director pursuant to authorities vested in the commission
20 pursuant to this section or permits, licenses, accreditations,
21 certificates, and other formal approvals and authorizations that the
22 department or its director are subject to pursuant to authorities
23 vested in the commission pursuant to this section, including State
24 Water Resources Control Board Decision No. 1641, are not affected
25 by the transfer and remain in effect, subject to all applicable laws
26 and regulations, unless renewed, reissued, revised, amended,
27 suspended, or revoked.

28 (e) Any action or proceeding by or against the department,
29 including any officer or employee of the department named in an
30 official capacity, pertaining to matters vested in the commission
31 by this section shall not abate, but shall continue in the name of
32 the commission. The commission shall be substituted for the
33 department, including any officer or employee of the department
34 named in an official capacity, by the court or agency where the
35 action or proceeding is pending. The substitution shall not in any
36 way affect the rights of the parties to the action or proceeding.

37 (f) On and after July 1, 2018, the unexpended balance of all
38 funds available for use by the department in carrying out any
39 functions transferred to the commission are available for use by
40 the commission.

1 (g) Books, documents, data, records, and property of the
2 department pertaining to functions transferred to the commission
3 shall be transferred to the commission.

4 (h) A contract, lease, license, or any other agreement, to which
5 the department, its director, or their agents, is a party, is not void
6 or voidable by reason of this section, but shall continue in full
7 force and effect, with the commission assuming all of the rights,
8 obligations, liabilities, and duties of the department as it relates to
9 the duties, powers, purposes, responsibilities, and jurisdiction
10 vested in the commission pursuant to this section. This assumption
11 does not affect the rights of the parties to the contract, lease,
12 license, or agreement.

13 195. (a) The commission may hold any hearings and conduct
14 any investigations in any part of the state necessary to carry out
15 the powers vested in it. For the purposes of this subdivision, the
16 commission shall have the powers of a head of a department as
17 set forth in Article 2 (commencing with Section 11180) of Chapter
18 2 of Part 1 of Division 3 of Title 2 of the Government Code.

19 (b) Except as provided in subdivision (c), any hearing or
20 investigation by the commission may be conducted by any member
21 of the commission or representative authorized by the commission
22 to exercise the powers of this section.

23 (c) Any final action in a hearing or investigation shall be taken
24 by a majority of the members of the commission at a meeting duly
25 called and held.

26 196. The commission shall conduct an annual review of the
27 progress of construction and operation of the State Water Project.
28 The commission shall report annually its findings and any
29 recommendations it deems appropriate to the department and to
30 the Legislature. A report submitted to the Legislature pursuant to
31 this section shall be submitted in compliance with Section 9795
32 of the Government Code.

33 197. The commission shall hold public hearings on all
34 additional facilities proposed to be added to the State Water Project
35 pursuant to the authority in Sections 12931 and 12938.

36 198. This article shall become operative on July 1, 2018.

37 SEC. 8. Section 275 of the Water Code is amended to read:

38 275. (a) The department and board shall take all appropriate
39 proceedings or actions before executive, legislative, or judicial

1 agencies to prevent waste, unreasonable use, unreasonable method
2 of use, or unreasonable method of diversion of water in this state.

3 *(b) This section shall become inoperative on July 1, 2018, and,*
4 *as of January 1, 2019, is repealed.*

5 SEC. 9. Section 275 is added to the Water Code, to read:

6 275. (a) The department shall take all appropriate proceedings
7 or actions before executive, legislative, or judicial agencies to
8 prevent waste, unreasonable use, unreasonable method of use, or
9 unreasonable method of diversion of water in this state.

10 (b) This section shall become operative on July 1, 2018.

11 SEC. 10. Section 1055 of the Water Code is amended to read:

12 1055. (a) The executive director of the board may issue a
13 complaint to any person or entity on which administrative civil
14 liability may be imposed pursuant to Section 1052, Article 4
15 (commencing with Section 1845) of Chapter 12 of Part 2 of
16 Division 2, or Section 5107. The complaint shall allege the act or
17 failure to act that constitutes a trespass or violation, the provision
18 of law authorizing civil liability to be imposed, and the proposed
19 civil liability.

20 (b) The complaint shall be served by personal notice or certified
21 mail. The complaint shall inform the party served that the party
22 may request a hearing not later than 20 days from the date the party
23 was served and that the board may adopt an order setting
24 administrative civil liability based on the allegations set forth in
25 the complaint without a hearing if the party does not sign a written
26 request for a hearing that is delivered to, or received by mail by,
27 the board within 20 days after the date the party was served. The
28 hearing shall be before the board or a member of the board, in
29 accordance with Section 183.

30 (c) The board, after any necessary hearing, may adopt an order
31 setting administrative civil liability, or determining that a liability
32 shall not be imposed.

33 (d) Orders setting administrative civil liability shall become
34 effective and final upon issuance thereof and payment shall be
35 made.

36 *(e) This section shall become inoperative on July 1, 2018, and,*
37 *as of January 1, 2019, is repealed.*

38 SEC. 11. Section 1055 is added to the Water Code, to read:

39 1055. (a) The director of the department may issue a complaint
40 to any person or entity on which administrative civil liability may

1 be imposed pursuant to Section 1052, Article 4 (commencing with
2 Section 1845) of Chapter 12 of Part 2 of Division 2, or Section
3 5107. The complaint shall allege the act or failure to act that
4 constitutes a trespass or violation, the provision of law authorizing
5 civil liability to be imposed, and the proposed civil liability.

6 (b) The complaint shall be served by personal notice or certified
7 mail. The complaint shall inform the party served that the party
8 may request a hearing conducted by the Water Rights Division of
9 the Office of Administrative Hearings not later than 20 days from
10 the date the party was served and that the department may adopt
11 an order setting administrative civil liability based on the
12 allegations set forth in the complaint without a hearing if the party
13 does not sign a written request for a hearing that is delivered to,
14 or received by mail by, the department within 20 days after the
15 date the party was served. The hearing shall be before an
16 administrative law judge of the Water Rights Division of the Office
17 of Administrative Hearings in accordance with Article 2.5
18 (commencing with Section 11375) of Chapter 4 of Part 1 of
19 Division 3 of Title 2 of the Government Code.

20 (c) The director, after any necessary hearing, may adopt an order
21 setting administrative civil liability, or determining that a liability
22 shall not be imposed.

23 (d) Orders setting administrative civil liability shall become
24 effective and final upon issuance thereof and payment shall be
25 made.

26 (e) This section shall become operative on July 1, 2018.

27 SEC. 12. Article 6 (commencing with Section 1110) is added
28 to Chapter 3 of Part 1 of Division 2 of the Water Code, to read:

29
30 Article 6. Repeal

31
32 1110. This chapter shall become inoperative on July 1, 2018,
33 and, as of January 1, 2019, is repealed.

34 SEC. 13. Article 4 (commencing with Section 1130) is added
35 to Chapter 4 of Part 1 of Division 2 of the Water Code, to read:

36
37 Article 4. Repeal

38
39 1130. This chapter shall become inoperative on July 1, 2018,
40 and, as of January 1, 2019, is repealed.

1 SEC. 14. Section 1525 of the Water Code is amended to read:

2 1525. (a) Each person or entity who holds a permit or license
3 to appropriate water, and each lessor of water leased under Chapter
4 1.5 (commencing with Section 1020) of Part 1, shall pay an annual
5 fee according to a fee schedule established by the board.

6 (b) Each person or entity who files any of the following shall
7 pay a fee according to a fee schedule established by the board:

8 (1) An application for a permit to appropriate water.

9 (2) A registration of appropriation for a small domestic use,
10 small irrigation use, or livestock stockpond use.

11 (3) A petition for an extension of time within which to begin
12 construction, to complete construction, or to apply the water to
13 full beneficial use under a permit.

14 (4) A petition to change the point of diversion, place of use, or
15 purpose of use, under a permit, license, or registration.

16 (5) A petition to change the conditions of a permit or license,
17 requested by the permittee or licensee, that is not otherwise subject
18 to paragraph (3) or (4).

19 (6) A petition to change the point of discharge, place of use, or
20 purpose of use, of treated wastewater, requested pursuant to Section
21 1211.

22 (7) An application for approval of a water lease agreement.

23 (8) A request for release from priority pursuant to Section 10504.

24 (9) An application for an assignment of a state-filed application
25 pursuant to Section 10504.

26 (10) A statement of water diversion and use pursuant to Part
27 5.1 (commencing with Section 5100) that reports that water was
28 used for cannabis cultivation.

29 (c) The board shall set the fee schedule authorized by this section
30 so that the total amount of fees collected pursuant to this section
31 equals that amount necessary to recover costs incurred in
32 connection with the issuance, administration, review, monitoring,
33 and enforcement of permits, licenses, certificates, and registrations
34 to appropriate water, water leases, statements of water diversion
35 and use for cannabis cultivation, and orders approving changes in
36 point of discharge, place of use, or purpose of use of treated
37 wastewater. The board may ~~include~~, *include* as recoverable costs,
38 but is not limited to including, the costs incurred in reviewing
39 applications, registrations, statements of water diversion and use
40 for cannabis cultivation, petitions and requests, prescribing terms

1 of permits, licenses, registrations, and change orders, enforcing
2 and evaluating compliance with permits, licenses, certificates,
3 registrations, change orders, and water leases, inspection,
4 monitoring, planning, modeling, reviewing documents prepared
5 for the purpose of regulating the diversion and use of water,
6 applying and enforcing the prohibition set forth in Section 1052
7 against the unauthorized diversion or use of water subject to this
8 division and the water diversion related provisions of Article 6
9 (commencing with Section 19331) of Chapter 3.5 of Division 8
10 of the Business and Professions Code, and the administrative costs
11 incurred in connection with carrying out these actions.

12 (d) (1) The board shall adopt the schedule of fees authorized
13 under this section as emergency regulations in accordance with
14 Section 1530.

15 (2) For filings subject to subdivision (b), the schedule may
16 provide for a single filing fee or for an initial filing fee followed
17 by an annual fee, as appropriate to the type of filing involved, and
18 may include supplemental fees for filings that have already been
19 made but have not yet been acted upon by the board at the time
20 the schedule of fees takes effect.

21 (3) The board shall set the amount of total revenue collected
22 each year through the fees authorized by this section at an amount
23 equal to the amounts appropriated by the Legislature for
24 expenditure for support of water rights program activities from
25 the Water Rights Fund established under Section 1550, taking into
26 account the reserves in the Water Rights Fund. The board shall
27 review and revise the fees each fiscal year as necessary to conform
28 with the amounts appropriated. If the board determines that the
29 revenue collected during the preceding year was greater than, or
30 less than, the amounts appropriated, the board may further adjust
31 the annual fees to compensate for the over or under collection of
32 revenue.

33 (e) Annual fees imposed pursuant to this section for the 2003–04
34 fiscal year shall be assessed for the entire 2003–04 fiscal year.

35 (f) *This section shall become inoperative on July 1, 2018, and,*
36 *as of January 1, 2019, is repealed.*

37 SEC. 15. Section 1525 is added to the Water Code, to read:

38 1525. (a) Each person or entity who holds a permit or license
39 to appropriate water, and each lessor of water leased under Chapter
40 1.5 (commencing with Section 1020) of Part 1, shall pay an annual

1 fee according to a fee schedule established by the department. The
2 department shall base the fee schedule solely upon a ratable share
3 of the average total actual diversion of water as reported by each
4 water right holder in the two years prior.

5 (b) Each person or entity who files any of the following shall
6 pay a fee according to a fee schedule established by the department:

7 (1) An application for a permit to appropriate water.

8 (2) A registration of appropriation for a small domestic use,
9 small irrigation use, or livestock stockpond use.

10 (3) A petition for an extension of time within which to begin
11 construction, to complete construction, or to apply the water to
12 full beneficial use under a permit.

13 (4) A petition to change the point of diversion, place of use, or
14 purpose of use, under a permit, license, or registration.

15 (5) A petition to change the conditions of a permit or license,
16 requested by the permittee or licensee, that is not otherwise subject
17 to paragraph (3) or (4).

18 (6) A petition to change the point of discharge, place of use, or
19 purpose of use, of treated wastewater, requested pursuant to Section
20 1211.

21 (7) An application for approval of a water lease agreement.

22 (8) A request for release from priority pursuant to Section 10504.

23 (9) An application for an assignment of a state-filed application
24 pursuant to Section 10504.

25 (10) A statement of water diversion and use pursuant to Part
26 5.1 (commencing with Section 5100) that reports that water was
27 used for cannabis cultivation.

28 (c) The department shall set the fee schedule authorized by this
29 section so that the total amount of fees collected pursuant to this
30 section equals 50 percent of that amount necessary to recover costs
31 incurred in connection with the issuance, administration, review,
32 monitoring, and enforcement of permits, licenses, certificates, and
33 registrations to appropriate water, water leases, statements of water
34 diversion and use for cannabis cultivation, and orders approving
35 changes in point of discharge, place of use, or purpose of use of
36 treated wastewater. The department may include as recoverable
37 costs, but is not limited to including, the costs incurred in reviewing
38 applications, registrations, statements of water diversion and use
39 for cannabis cultivation, petitions and requests, prescribing terms
40 of permits, licenses, registrations, and change orders, enforcing

1 and evaluating compliance with permits, licenses, certificates,
2 registrations, change orders, and water leases, inspection,
3 monitoring, planning, modeling, reviewing documents prepared
4 for the purpose of regulating the diversion and use of water,
5 applying and enforcing the prohibition set forth in Section 1052
6 against the unauthorized diversion or use of water subject to this
7 division and the water diversion related provisions of Article 6
8 (commencing with Section 19331) of Chapter 3.5 of Division 8
9 of the Business and Professions Code, and the administrative costs
10 incurred in connection with carrying out these actions.

11 (d) (1) The department shall adopt the schedule of fees
12 authorized under this section as emergency regulations in
13 accordance with Section 1530.

14 (2) For filings subject to subdivision (b), the schedule may
15 provide for a single filing fee or for an initial filing fee followed
16 by an annual fee, as appropriate to the type of filing involved, and
17 may include supplemental fees for filings that have already been
18 made but have not yet been acted upon by the department at the
19 time the schedule of fees takes effect.

20 (3) The department shall set the amount of total revenue
21 collected each year through the fees authorized by this section at
22 an amount equal to 50 percent of the amounts appropriated by the
23 Legislature for expenditure for support of water rights program
24 activities from the Water Rights Fund established under Section
25 1550, taking into account the reserves in the Water Rights Fund.
26 The department shall review and revise the fees each fiscal year
27 as necessary to conform with the amounts appropriated. If the
28 department determines that the revenue collected during the
29 preceding year was greater than, or less than, the amounts
30 appropriated, the department may further adjust the annual fees to
31 compensate for the over or under collection of revenue.

32 (e) This section shall become operative on July 1, 2018.

33 SEC. 16. Section 1552 of the Water Code is amended to read:

34 1552. (a) Except as provided in subdivision (e) of Section
35 1058.5, moneys in the Water Rights Fund are available for
36 expenditure, upon appropriation by the Legislature, for the
37 following purposes:

38 (a)

39 (1) For expenditure by the State Board of Equalization in the
40 administration of this chapter and the Fee Collection Procedures

1 Law (Part 30 (commencing with Section 55001) of Division 2 of
2 the Revenue and Taxation Code) in connection with any fee or
3 expense subject to this chapter.

4 ~~(b)~~

5 (2) For the payment of refunds, pursuant to Part 30 (commencing
6 with Section 55001) of Division 2 of the Revenue and Taxation
7 Code, of fees or expenses collected pursuant to this chapter.

8 ~~(e)~~

9 (3) For expenditure by the board for the purposes of carrying
10 out this division, Division 1 (commencing with Section 100), Part
11 2 (commencing with Section 10500) and Chapter 11 (commencing
12 with Section 10735) of Part 2.74 of Division 6, Article 7
13 (commencing with Section 13550) of Chapter 7 of Division 7, and
14 the water diversion related provisions of Article 6 (commencing
15 with Section 19331) of Chapter 3.5 of Division 8 of the Business
16 and Professions Code.

17 ~~(d)~~

18 (4) For expenditures by the board for the purposes of carrying
19 out Sections 13160 and 13160.1 in connection with activities
20 involving hydroelectric power projects subject to licensing by the
21 Federal Energy Regulatory Commission.

22 ~~(e)~~

23 (5) For expenditures by the board for the purposes of carrying
24 out Sections 13140 and 13170 in connection with plans and policies
25 that address the diversion or use of water.

26 *(b) This section shall become inoperative on July 1, 2018, and,*
27 *as of January 1, 2019, is repealed.*

28 SEC. 17. Section 1552 is added to the Water Code, to read:

29 1552. (a) Except as provided in subdivision (e) of Section
30 1058.5, moneys in the Water Rights Fund are available for
31 expenditure, upon appropriation by the Legislature, for the
32 following purposes:

33 (1) For expenditure by the State Board of Equalization in the
34 administration of this chapter and the Fee Collection Procedures
35 Law (Part 30 (commencing with Section 55001) of Division 2 of
36 the Revenue and Taxation Code) in connection with any fee or
37 expense subject to this chapter.

38 (2) For the payment of refunds, pursuant to Part 30 (commencing
39 with Section 55001) of Division 2 of the Revenue and Taxation
40 Code, of fees or expenses collected pursuant to this chapter.

1 (3) For expenditure by the department for the purposes of
2 carrying out this division, Division 1 (commencing with Section
3 100), Part 2 (commencing with Section 10500) and Chapter 11
4 (commencing with Section 10735) of Part 2.74 of Division 6,
5 Article 7 (commencing with Section 13550) of Chapter 7 of
6 Division 7, and the water diversion related provisions of Article
7 6 (commencing with Section 19331) of Chapter 3.5 of Division 8
8 of the Business and Professions Code.

9 (4) For expenditures by the department for the purposes of
10 carrying out Sections 13160 and 13160.1 in connection with
11 activities involving hydroelectric power projects subject to
12 licensing by the Federal Energy Regulatory Commission.

13 (5) For expenditures by the department for the purposes of
14 carrying out Sections 13140 and 13170 in connection with plans
15 and policies that address the diversion or use of water.

16 (6) For expenditures by the Water Rights Division of the Office
17 of Administrative Hearings for the purposes of carrying out Article
18 2.5 (commencing with Section 11375) of Chapter 4 of Part 1 of
19 Division 3 of Title 2 of the Government Code.

20 (b) This section shall become operative on July 1, 2018.

21 SEC. 18. The provisions of this act are severable. If any
22 provision of this act or its application is held invalid, that invalidity
23 shall not affect other provisions or applications that can be given
24 effect without the invalid provision or application.